

Appl. No. 10/600,487
Amendment dated January 3, 2006
Reply to Office Action of October 3, 2005

Remarks/Arguments

Claims 1-23 are pending and stand rejected on varying grounds under §112(b), §102(b) and 103(a).

Claim 17 has been amended to further clarify the invention and claim 23 has been amended to resolve a §112 issue.

In view of the comments below, Applicant respectfully requests that the Examiner reconsider the present application including claims 1-23 and withdraw the rejection of these claims.

a) Applicant notes with appreciation that the Examiner has considered the art listed on and returned an initialed copy of form 1449 and that the drawings have been accepted.

b) Claim 23 stands rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 has been amended and as amended is believed to traverse this rejection. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection of claim 23 under 35 USC §112.

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c) Claim 17 stands rejected under 35 U.S.C. 102(b) as being anticipated by Baumann (US Patent 6,106,922).

Claim 17 is in independent form and has been amended to recite that the one of the plurality of biometric sensors selected when a corresponding predetermined condition is present. Claim 17 defines a method for enabling a feature on a wireless communication device where the method includes collecting a biometric sample corresponding to a user from one of a plurality of biometric sensors that is selected when a corresponding predetermined condition is present and enabling the feature when the biometric sample corresponds to a known sample.

Baumann describes an apparatus and methodology that seeks to address service piracy for cellular operators (see background section at col. 1). This is done by allowing access to service only after authenticating both a user and at the same time a cellular phone, i.e., cross authentication. This is done by collecting a biometric for a user and forwarding, to a network entity, the biometric as well as an RF signature corresponding to a phone. Access to the phone is granted only after the network entity determines that the RF signature and the biometric both match a profile (see FIG. 5-7).

The Examiner maintains that "Baumann discloses a method and apparatus including a wireless communication device 30 with a plurality of biometric devices (330, 360, 375), collecting a biometric sample (510/610) and enabling a feature (560/670) when a biometric sample corresponds (540/650) to a known sample. See figs. 3 and 5-6 and col. 6 line 38 - col. 7 line 42 and col. 8 lines 10-65."

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In Applicant's respectfully submitted view, nothing in Baumann shows or suggests that one of a plurality of biometric sensors is selected when a corresponding predetermined condition is present as recited in amended claim 17. Thus, Baumann does not show or suggest all features of claim 17 and therefore does not support a §102(b) rejection of this claim. Hence, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection of claim 17 under 35 U.S.C. 102(b) as being anticipated by Baumann (US Patent 6,106,922).

d) Claims 1-4, 6, 8-13, 15-19 and 21-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent 6,106,922) as applied above in combination with Matchett (US Patent 5,229,764).

Claims 1, 12, and 17 are in independent form with all other claims dependent on the closest lower numbered one of the independent claims.

Matchett concerns using a plurality of biometric authentication devices and granting access or continuing to grant access to, e.g., a cell phone, based on affirmative results from the plurality of biometric devices. Associated thresholds may be adjusted by application and the biometric tests may be weighted according to test accuracy (see e.g., col. 3, line 45-52).

The Examiner concedes that Baumann does not disclose selection of one of the biometric sensors, but maintains that "Matchett discloses an analogous art biometric authentication system and method that may individually select one of a plurality biometric authentication devices. Selection may be made by time where one devices may be tested three times a minute while another is tested ten times a minute in col. 7 lines 2-5 or selection may rely on hierarchy of test

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importance where more accurate tests are given greater weight than less accurate tests in col. 7 lines 19-28."

Applicant respectfully disagrees with the Examiner's construction of Matchett and submits that selecting one of a plurality of biometric devices and basing an enablement decision on an identity of a user as confirmed by that one of a plurality of biometric devices as claimed is clearly distinct from biometric devices making measurements at different rates and thus not being synchronized (col. 7, lines 2-5) or giving more accurate readings greater weight than less accurate readings from differing such devices (col. 7, lines 19-28 – CPU given indications of failed comparisons for a relatively inaccurate test may cause prompting of a more highly accurate test, before deciding whether to shutdown). Matchett is clearly not selecting a sensor and enabling a function based on confirmation of a user by that sensor all as claimed by claim 1, claim 12 or amended claim 17.

Applicant thus respectfully submits that Matchett alone or together with Baumann does not show or suggest all features of independent claim 1, claim 12, or amended claim 17 or, at least by virtue of dependency, dependent claims 3-4, 6, 8-10, 13, 15-16, 18-19, and 21-23. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection of claims 1-4, 6, 8-13, 15-19 and 21-23 under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent 6,106,922) in combination with Matchett (US Patent 5,229,764).

In addition to dependency on claim 1, claim 6 recites selecting a biometric device having a higher reliability when the corresponding predetermined condition indicates a suitable

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operating environment. Nothing in Matchett suggests higher reliability as a function of operating environment as claimed. Similarly claim 21 and claim 23 in addition to dependency on claim 17, recite selecting a sensor based on operating environment as claimed and this is not shown or suggested by Matchett.

In addition to dependency on claim 1, claim 8 recites "wherein the controller is operable to limit a number of times a second biometric device may be used to confirm the identity of the user before a first biometric device must be used to confirm the identity of the user" which is not shown or suggested by the varying number of measurements from different sensors as described at col. 7, lines 2-5 of Matchett. Similarly, claim 15 in addition to being dependent on claim 12 recites "wherein a first biometric sensor must be used to authorize the use of the feature after a predetermined number of consecutive uses of a second biometric sensor to authorize the use of the feature" which is clearly not shown or suggested by Matchett at col. 7, lines 2-5.

At least for these additional reasons, claim 6, 8, 15, 21, and 23 should be deemed allowable over this combination of references and thus Applicant respectfully requests that the Examiner reconsider and withdraw this rejection of these claims for these additional reasons.

e) Claims 7 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent 6,106,922) and Matchett (US Patent 5,229,764) as applied above and further in view of Prokoski (US Patent 6,850,147).

Claim 7 is dependent on claim 1 and claim 14 is dependent on claim 12. Prokoski does not show or suggest taken alone or together with Baumann and Matchett all features of claim 1 or claim 12 and thus Applicant submits that claim 1 and claim 12 are allowable over these three

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references. Thus, at least by virtue of dependency, dependent claim 7 and 14 should likewise be allowable. Applicant thus respectfully requests that the Examiner reconsider and withdraw this rejection of claims 7 and 14 under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent 6,106,922) and Matchett (US Patent 5,229,764) as applied above and further in view of Prokoski (US Patent 6,850,147).

f) Claim 20 stands rejected under 35 U.S.C. 103(a) as unpatentable over Baumann (US Patent 6,106,922) and Matchett (US Patent 5,229,764) as applied above and further in view of Maes (US Patent 6,016,476).

Claim 20 is dependent on claim 17. Maes does not show or suggest taken alone or together with Baumann and Matchett all features of claim 17 and thus Applicant submits that claim 17 is allowable over these three references. Thus, at least by virtue of dependency, dependent claim 20 should likewise be allowable. Applicant thus respectfully requests that the Examiner reconsider and withdraw this rejection of claim 20 under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent 6,106,922) and Matchett (US Patent 5,229,764) as applied above and further in view of Maes (US Patent 6,016,476).

g) Claim 5 stands rejected under 35 U.S.C. 103(a) as unpatentable over Baumann(US Patent 6,106,922) and Matchett (US Patent 5,229,764)as applied above and further in view of Brunelli (US Patent 5,412,738), Osten (US Patent 5,719,950) or Colmenarez (US Patent 6,498,970).

Claim 5 is dependent on claim 1. Brunelli, Osten or Colmenarez do not show or suggest taken alone or together with Baumann and Matchett all features of claim 1 and thus Applicant

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submits that claim 1 is allowable over these three references. Thus, at least by virtue of dependency, dependent claim 5 should likewise be allowable. Applicant thus respectfully requests that the Examiner reconsider and withdraw this rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent 6,106,922) and Matchett (US Patent 5,229,764) as applied above and further in view of Brunelli (US Patent 5,412,738), Osten (US Patent 5,719,950) or Colmenarez (US Patent 6,498,970).

Accordingly, Applicant respectfully submits that the claims, as amended, clearly and patentably distinguish over the cited references of record and as such are to be deemed allowable. Such allowance is hereby earnestly and respectfully solicited at an early date. If the Examiner has any suggestions or comments or questions, calls are welcomed at the phone number below.

Although it is not anticipated that any fees are due or payable, the Commissioner is hereby authorized to charge any fees that may be required to Deposit Account No. 50-3435.

Respectfully submitted,

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